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5 Attorney for Defendant

6 REAL PROPERTY AND IMPROVEMENTS  
7 LOCATED AT 4589 CROOKED PRAIRIE ROAD,  
HUMBOLDT COUNTY, CALIFORNIA,  
ASSESSOR'S PARCEL NUMBER 221-181-028

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**

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16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 vs.

19 REAL PROPERTY AND IMPROVEMENTS

20 LOCATED AT 4589 CROOKED PRAIRIE

21 ROAD, HUMBOLDT COUNTY,

22 CALIFORNIA, ASSESSOR'S PARCEL

23 NUMBER 221-181-028,

) Case No.: 08-2696 WDB

) **DEFENDANT'S ANSWER TO  
COMPLAINT FOR FORFEITURE**

24  
25  
26 Defendant

27  
28 COMES NOW Defendant, REAL PROPERTY AND IMPROVEMENTS LOCATED  
AT 4589 CROOKED PRAIRIE ROAD, HUMBOLDT COUNTY, CALIFORNIA,  
ASSESSOR'S PARCEL NUMBER 221-181-028 and Answers the Complaint as follows:

1. In response to Paragraph 1 of the Complaint, Defendant admits the allegations  
2 therein contained.

3. In response to Paragraph 2 of the Complaint, Defendant admits the allegations  
4 therein contained.

5. In response to Paragraph 3 of the Complaint, Defendant admits incorporate herein  
6 by reference paragraphs 1 through 12, above inclusive, as though fully set forth herein.

7. In response to Paragraph 4 of the Complaint, Defendant admits the allegations  
8 therein contained.

9. In response to Paragraph 5 of the Complaint, Defendant incorporates herein by  
10 reference its responses to paragraphs 1 through 4, above inclusive, as though fully set forth  
11 herein.

12. In response to Paragraph 6 of the Complaint, Defendant is without sufficient  
13 information and/or belief upon which to base its response, and therefor denies the allegations  
14 therein contained.

15. In response to Paragraph 7 of the Complaint, Defendant is without sufficient  
16 information and/or belief upon which to base its response, and therefor denies the allegations  
17 therein contained.

18. In response to Paragraph 8 of the Complaint, Defendant is without sufficient  
19 information and/or belief upon which to base its response, and therefor denies the allegations  
20 therein contained.

21. In response to Paragraph 9 of the Complaint, Defendant is without sufficient  
22 information and/or belief upon which to base its response, and therefor denies the allegations  
23 therein contained.

24. In response to Paragraph 10 of the Complaint, Defendant is without sufficient  
25 information and/or belief upon which to base its response, and therefor denies the allegations  
26 therein contained.

11. In response to Paragraph 11 of the Complaint, Defendant is without sufficient information and/or belief upon which to base its response, and therefore denies the allegations therein contained.

12. In response to Paragraph 12 of the Complaint, Defendant incorporates herein by reference its responses to paragraphs 1 through 11, above inclusive, as though fully set forth herein.

13. In response to Paragraph 4 of the Complaint, Defendant admits the allegations therein contained, but denies any culpability for any charges which could be brought under such legislation.

14. In response to Paragraph 14 of the Complaint, Defendant denies the allegations therein contained.

15. In response to Paragraph 15 of the Complaint, Defendant is without sufficient information and/or belief upon which to base its response, and therefore denies the allegations therein contained.

## Affirmative Defenses

Defendant hereby asserts the following affirmative defenses to the Complaint and each of the claims set forth therein:

1. The complaint fails to allege facts sufficient to constitute a cause of action.
2. Plaintiffs' claims are barred by the doctrine of waiver.
3. Plaintiffs' claims are barred by the doctrine of estoppel.
4. Plaintiffs' claims are barred by the statute of limitations.
5. Plaintiffs' claims are barred by the doctrine of laches.
6. Plaintiffs' claims are barred by the statute of frauds.
7. Plaintiffs' claims are barred by doctrine of unclean hands.
8. Plaintiffs' lacks standing to assert the claims set forth in the complaint.
9. All operations conducted, if any there were, were done so under color of law.

## **Relief Requested**

WHEREFORE, Defendant REAL PROPERTY AND IMPROVEMENTS LOCATED AT 4589 CROOKED PRAIRIE ROAD, HUMBOLDT COUNTY, CALIFORNIA, ASSESSOR'S PARCEL NUMBER 221-181-028, prays that the Plaintiff take nothing by this action, that the Defendant be awarded attorney fees, costs of the suit, and for such other and further relief as the Court may deem proper, including dismissal of any *Lis Pendens*.

Dated: August 13, 2008

THOMAS M. SWIHART  
Attorney for Defendant  
REAL PROPERTY AND  
IMPROVEMENTS LOCATED AT  
4589 CROOKED PRAIRIE ROAD,  
HUMBOLDT COUNTY,  
CALIFORNIA, ASSESSOR'S  
PARCEL NUMBER 221-181-028

1 **PROOF OF SERVICE**  
2 *United States v. 4589 Crooked Lane, etc.*  
3 Case No. 08-2696 WDB

4 I, THOMAS M. SWIHART, declare:

5 I am over the age of eighteen years and not a party to the cause of action. My business address is  
6 2039 Shattuck Avenue, Suite 308, Berkeley, CA 94704. On August 13, 2008, I served the  
7 documents described as: **DEFENDANT'S ANSWER TO COMPLAINT FOR**  
8 **FORFEITURE** on the interested parties in this matter by placing a true copy thereof in a sealed  
9 envelope(s) addressed as follows:

10 **David B. Countryman, AUSA**  
11 **Office of the US Attorney**  
12 **450 Golden Gate Avenue, 9<sup>th</sup> Floor**  
13 **San Francisco, CA 94102**

14 Service of the above document(s) was effectuated by the following means of service:

15 [x] **By First Class Mail** -- I am readily familiar with this office's practice  
16 for collection and processing of correspondence for mailing with the  
17 United States Postal Service. It is deposited with the United States  
18 Postal Service in the ordinary course of business on the same day it is  
19 processed for mailing. I caused such envelope(s) to be deposited in  
20 the mail at Berkeley, California. The envelope was mailed with  
21 postage thereon fully prepaid.

22 [ ] **By Personal Service** -- By causing to personally deliver a true copy  
23 thereof in a sealed envelope.

24 [ ] **By Overnight Delivery Service** -- I caused such envelope(s) to be  
25 deposited in a box or other facility regularly maintained by the  
26 express service carrier or delivered to an authorized courier or driver  
27 authorized by the express service carrier to receive documents. The  
28 envelope was deposited with the express service carrier with delivery  
fees paid or provided for.

29 [x] **Facsimile Transmission** -- I served the documents in this matter via  
30 facsimile transmission to: **(415) 436-6748**

31 I declare under penalty of perjury under the laws of the State of California that the  
32 foregoing is true and correct, and executed this 13<sup>th</sup> day of August, 2008, at Berkeley,  
33 California.

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